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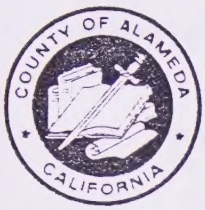
AGENDA S-3 April 2, 1991 5/24/91




COUNTY ADMINISTRATOR

STEVEN C. SZALAY
COUNTY ADMINISTRATOR

SUSAN S. MURANISHI
ASSISTANT COUNTY ADMINISTRATOR

March 28, 1991



Honorable Board of Supervisors
Administration Building
Oakland, CA 94612

Dear Board Members:

Subject: Waiver Request from the City and County of San Francisco of the $6 per ton Surcharge Pursuant to the Waste Reduction and Recycling Act of 1990 (Measure D)

RECOMMENDATION:

- That based upon the existing agreement between the City and County of San Francisco and the Alameda County Waste Management Authority which provides that no additional fees shall be required of San Francisco, the imposition of the $6 per ton surcharge would be inconsistent with the provisions of the agreement; and, that the discretion afforded the Board of Supervisors to grant a waiver from the surcharge is not conditioned on Alameda County being a party to the agreement.

SUMMARY:

Alameda County received a letter dated March 12, 1991 from Rudolf Nothenberg, Chief Administrative Officer, City and County of San Francisco expressing his concerns regarding the imposition of the $6 per ton pursuant to Measure D and his position that the surcharge should be waived.

Section 64.050 (B) of the Alameda County Waste Reduction and Recycling Act of 1990 (Measure D) provides that your Board may vote to waive collection if it is found to be in violation of an existing contract or agreement.

DISCUSSION AND FINDINGS:

In order to place the waiver request by San Francisco in its proper context, it should be looked at within the context of Section 64.050 (B) of the Waste Reduction and Recycling Act of 1990 (Measure D). This section states:

> Should the collection of said surcharge be found to be in violation of an existing contract or agreement to import refuse generated outside of Alameda County for landfilling or incineration within Alameda County, the Board of Supervisors may vote to waive collection of said surcharge for the refuse described within said contract or agreement. However, any future contract

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or agreement for the importation of refuse for landfilling or incineration within Alameda County, executed or negotiated after the effective date of this Act, shall provide for the collection of said surcharge for the refuse described within said contract or agreement.

In staff discussions with representatives of the Recycling Initiative Committee, they indicated that while they did not specifically review the conditions or terms of the San Francisco waste import agreement during the drafting Measure D, they were aware of its existence. Section 64.050 (B) was an attempt on the drafter's part to recognize the existence of this agreement and to have the $6 surcharge apply, if found not to be in violation of existing contract or agreement language. In establishing the waiver request procedure, it was recognized that there was a probability that the $6 surcharge may not be applicable to San Francisco's existing agreement.

The effective date of the imposition of the $6 per ton surcharge was March 20, 1991. Accordingly, the Waste Management Authority provided notification to the City and County of San Francisco that, in the absence of an approved waiver, they would be required to comply with the surcharge provisions of Measure D as of that date.

Subsequently, County and Waste Management Authority staff as well as members of your Board have met with Mr. Nothenberg to review Measure D, the $6 surcharge provision, the waiver procedure, and the respective positions of each jurisdiction. At present only San Francisco has a waste import agreement with Alameda County. The agreement was executed January 16, 1985 and requires San Francisco to pay the Waste Management Authority a $3.50 per ton mitigation fee, adjusted annually for inflation, on all solid waste disposed of in Alameda County. The current agreement is not time limited but rather based upon a maximum amount of 10 million tons. Based on current disposal tonnage amounts, it is estimated that the effective life of this agreement could be as long as ten years.

Mr. Nothenberg's letter cites pertinent parts of the existing agreement as justification for their position that the imposition of the $6 surcharge is in violation of their existing contract. Specifically, "The City, therefore, shall make no additional payment to the Authority, its members, agencies, or the County of Alameda for mitigation of any and all impacts caused by the importation and disposal of San Francisco's municipal solid waste and waste treatment sludge including, but not limited to, environmental impacts, transportation impacts, and the depletion of landfill capacity in Alameda County."

Based upon discussions and review of this matter by County Counsel, it appears that your Board <u>does</u> have the discretion to grant a waiver for San Francisco since such an agreement does exist. It is clear that the agreement provides that no additional fees shall be required of San Francisco and that the imposition of the $6 per ton surcharge would be inconsistent with the provisions of the agreement. The discretion afforded your Board to grant a waiver is not conditioned on the County being a party to the agreement. Should your Board elect not to grant the waiver, San Francisco can challenge the surcharge in court. Measure D is currently under litigation by the Cities of Dublin and Pleasanton, and the Oro Loma Sanitary District in <u>City of Dublin, et</u>

al. v. Alameda County et al, and is presently set for hearing on May 10, 1991 (see attachment from County Counsel).

FINANCING:

There is no net County cost impact associated with the recommendation.

Very truly yours,

STEVEN C. SZALAY
COUNTY ADMINISTRATOR

Attachments
SCS:DG:dg

cc: Kelvin Booty, County Counsel
Tom Martinsen, Exec. Director, WMA
Rudolf Nothenberg, San Francisco CAO

6236c

COUNTY COUNSEL
FOURTH FLOOR, ADMINISTRATION BUILDING, 1221 OAK STREET
OAKLAND, CALIFORNIA 94612 • TELEPHONE (415) 272-6700 • FAX (415) 272-5020

KELVIN H. BOOTY, JR.
COUNTY COUNSEL

March 26, 1991

Honorable Mary King
President, Board of Supervisors
1221 Oak Street, Room 536
Oakland, California 94612

Re: Recycling Initiative (Measure D); San Francisco and Contra Costa County Surcharge Waiver Request

Dear President King:

Attached to your March 14, 1991 letter was a copy of a request from the City and County of San Francisco for waiver of the $6 surcharge imposed by Measure D and a similar request from Contra Costa County. For the following reasons, it is our view that the Board of Supervisors has the discretion to grant the waiver to San Francisco but not to Contra Costa County.

The Recycling Initiative provides that: "Should the collection of said surcharge be found to be in violation of an existing contract or agreement to import refuse generated outside of Alameda County for landfilling or incineration with Alameda County, the Board of Supervisors may vote to waive collection of said surcharge for the refuse described within said contract or agreement. However, any future contract or agreement for the importation of refuse for landfilling or incineration with Alameda County, executed or negotiated after the effective date of this Act, shall provide for the collection of said surcharge for the refuse described within said contract or agreement." (Section 64.050(B).) Such an agreement exists between the Waste Management Authority and San Francisco. The agreement was executed January 16, 1985 and requires San Francisco to pay the Authority a $3.50 per ton mitigation fee (adjusted annually for inflation) on all solid waste disposed of in Alameda County. The agreement also provides that:

> City shall pay or have payments made to the Authority in the amount of three dollars and fifty cents ($3.50) per ton (indexed yearly, as shown in Exhibit B) of all municipal solid waste and wastewater treatment sludge disposed by City at Altamont. Such payments shall be the total on any account that the City shall pay the Authority. The City, therefore, shall make no additional payment to the Authority, its members, agencies, or the County of Alameda for mitigation of any and all impacts caused by the importation and disposal of San Francisco's municipal solid waste and wastewater treatment sludge including, but not limited to, environmental impacts, transportation impacts, and the depletion of landfill capacity in Alameda County.

Thus, it is clear that the agreement provides that no additional fees shall be required of San Francisco. The imposition of the $6 per ton surcharge would obviously be inconsistent with the provision of the agreement quoted above. The discretion afforded the Board of Supervisors to grant a waiver from the $6 per ton surcharge is not conditioned on the County being a party to the agreement.

If the Board of Supervisors refuses to grant the waiver, San Francisco can challenge the surcharge in court. As you know, the surcharge is under attack by the Cities of Dublin and Pleasanton, and the Oro Loma Sanitary District in City of Dublin, et al. v. Alameda County, et al., Napa Co. Super. Ct. No. C61787, which is presently set for hearing on May 10, 1991.

In the case of Contra Costa County there is no agreement like San Francisco's. The agreement between the waste hauler, Acme Waste, and the landfill owner, Oakland Scavenger Company, simply permits the latter to pass through such fees. The County has amended Oakland Scavenger Company's conditional use permit to allow the importation of waste from Contra Costa County on the condition that certain roadway and other environmental fees totalling $3.09 per ton be paid.

Contra Costa County asks that, if Alameda County does not grant the waiver, the $6 per ton surcharge be credited against $3.09 per ton now required by the conditional use permit. To obtain a modification of the conditional use permit, an application would need to be filed with the Alameda County Planning Department for the consideration of the Zoning Administrator.

Needless to say, Contra Costa County could seek to join with the other challengers to the surcharge in the Napa County suit.

Very truly yours,

KELVIN H. BOOTY, JR.
County Counsel

KHB/LEC/pb
MaryKing.lec

cc: Each Member, Board of Supervisors

County Administrator

Thomas M. Martinsen

RECEIVED

OFFICE OF

# CHIEF ADMINISTRATIVE OFFICER

RUDOLF NOTHENBERG
CHIEF ADMINISTRATIVE OFFICER

289 CITY HALL
SAN FRANCISCO
CALIFORNIA 94102
415/554-4851

March 12, 1991

The Honorable Mary King
Member, Alameda County
Board of Supervisors
1221 Oak St., Rm 536
Oakland, CA 94612

Re: Alameda County Waste Reduction and Recycling Initiative

Dear Supervisor King:

We are writing to provide you with some background on San Francisco's contractual relationships with the Alameda County Solid Waste Management Authority. We will be calling you soon to request a brief meeting with you on this matter.

Our concern and consequent request for a meeting is occasioned by a recent letter from Mr. Thomas Martinsen, the Executive Director of the Authority advising us of the Authority's intent to implement the $6.00 surcharge authorized by the initiative. The initiative also provides (Subsection 64.050B) that the Board of Supervisors has the authority to waive the surcharge if it is "found to be in violation of an existing contract or agreement to import refuse generated outside of Alameda County for landfilling or incerneration within Alameda County".

We would like to make you aware of our contractual relationships and to advise you of our position relative to the imposition of this surcharge on refuse the City and County of San Francisco is currently landfilling in Alameda County.

On January 16, 1985, San Francisco and the Executive Committee of the Alameda County Solid Waste Management Authority entered into a Memorandum of Understanding (MOU) that set the basic parameters for San Francisco to dispose in Alameda County solid waste generated in San Francisco. In Item 5 of the MOU, San Francisco agreed to pay a $3.50 per ton mitigation fee (adjusted annually for inflation) to the Authority on all San Francisco solid waste disposed in Alameda County. The MOU expressly provides that this mitigation fee covers all mitigation impacts including depletion of landfill capacity caused by San Francisco's solid waste. It further provides that no additional charges be made by Alameda County for these purposes. In pertinent part, Item 5 of the MOU states:

"City shall pay or have payments made to the Authority in the amount of three dollars and fifty cents ($3.50) per ton (indexed yearly, as shown in Exhibit B) of all municipal solid waste and wastewater treatment sludge disposed by City at Altamont. Such payments shall be the total on any account that the City shall pay the Authority. The City, therefore, shall make no additional payment to the Authority, its members, agencies, or the County of Alameda for mitigation of any and all impacts caused by the importation and disposal of San Francisco's municipal solid waste and wastewater treatment sludge including, but not limited to, environmental impacts, transportation impacts, and the depletion of landfill capacity in Alameda County."

Alameda County Solid Waste Management Authority Resolution 78 and the Waste Disposal Agreement between Oakland Scavenger Company, San Francisco and the Sanitary Fill Company have implemented the MOU and since 1987, Alameda County has received in excess of $5 million dollars in mitigation fees. We believe very strongly that, based on the agreements cited above, any additional surcharge is barred, being inconsistent with and contrary to the very explicit limitations of our agreements.

As noted above, we will be calling you to try to set up an appointment to discuss our position with you in more detail. Should you have any questions about any of this in the meantime, I hope you will give us a call.

Sincerely,

Rudolf Nothenberg
Chief Administrative Officer

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